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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

RETTA, YEHDEGA

ART UNIT

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3622

MAIL DATE

DELIVERY MODE

11/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|  |                                      |  |  |
|--|--------------------------------------|--|--|
| <p align="center"><b>Advisory Action</b><br/><b>Before the Filing of an Appeal Brief</b></p> | <b>Application No.</b><br>09/804,728 | <b>Applicant(s)</b><br>SRINIVASAN ET AL. |  |
|  | <b>Examiner</b><br>Yehdega Retta     | <b>Art Unit</b><br>3622                  |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-20.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/Yehdega Retta/  
Primary Examiner, Art Unit 3622

Continuation of 11. does NOT place the application in condition for allowance because:

In regard to the term "other customers" it is unclear what makes the customers "other customers" since there is nothing in the claim that differentiate those customer as "other customers". The claim does not indicate that the customer that is determined to be defunct is not part of the "other customers". The claim only recites "a customer". Applicant in his argument indicates that the optimal promotion is determined from experiments on "other" customers in a sample and presents the promotion to the customer in question and refers to par. 0075 and 0076 for support.

Paragraph 0076 however discloses as follows.

[0076] It is easy to change eCommerce promotions by simply updating a Web page. In addition, it is possible to present different promotions to different online customers without either customer learning the promotion that has been offered to the other. This may be accomplished by presenting different levels of promotion to different potential customers, for example. Because of these reasons, it is possible to perform controlled, real-time experiments on samples of the customer population to determine customer promotion sensitivities. This information can then be used to determine real-time optimal promotion strategies for an entire customer population or for selected segments of the customer population. In addition, merchants may learn from the online experiments, and apply this learning to offline counterpart market strategies.

As indicated above the customer in question is part of the sample of the customer population on which the experiments are performed.

Examiner withdraws the 112 1st , rejection, however the claim will be interpreted to mean that the offer includes advertisement determined from dynamic analyses of promotional experimentation of various promotions offered to various customers, since there is nothing in claim that differentiate the customers as other customers. The rejection of 112, 2nd is maintained.

Applicant also argues that Herz represents the static learning and profiling that the instant invention, in part, is directed at overcoming through real time experimentation and determination of optimal promotions.

Examiner respectively disagrees and would like to point out that unless a term is given a "clear definition" in the specification (MPEP § 211.01), the examiner is obligated to give claims their broadest reasonable interpretation, in light of the specification, and consistent with the interpretation that those skilled in the art would reach (MPEP § 2111). An inventor may define specific terms, used to describe invention, but must do so "with reasonable clarity, deliberateness, and precision"

According to Applicant "(t)he experiments may be automatically conducted on an on-going basis, or may be conducted on a periodic basis. The resulting optimal values may also be implemented automatically. The system offers total flexibility to the users to conduct and control the experiments. The experimental process is based upon rigorous statistical and econometric principles". (See [0076]). Applicant's specification also teaches as follows:

[0093] When the defunct threshold is exceeded at 420, that customer may be passed to the dynamic sampling engine 262 described hereinbefore for a determination of the optimum promotional level to be offered. Experimentation utilizing the dynamic sampling engine 262 may be repeated periodically to ensure that the optimal promotion is dynamically optimized to regularly compensate for market changes. Thus, experiments utilizing the dynamic sampling engine 262 may be run monthly, weekly, daily, hourly, or more often, until the experimentation becomes, practically speaking, continuous. Dynamic optimization, therefore, is a result of continuous experimentation. The optimum promotion may, furthermore, be propagated to the web at 435 for offering to customers each time a new optimum promotion level is discovered by the dynamic sampling engine. Alternately either the system or the operator may propagate the optimum promotion each time the optimum promotion level changes by a particular amount from the previous promotion level such as, for example, \$0.25. Data from the web 432, such as purchase, timing, and use of promotions by customers may also be provided from the web 435 to the dynamic sampling engine for use in future samples.

Same as applicant's Herz also teaches in real-time analyzing what fraction of shoppers (or similar shoppers) (same as applicant's a "sample of customer population") who were presented with the offers (or similar offers) chose to accept (same as Applicant's experimentation). Further Herz teaches the shoppers profile includes summary of offers that the shopper has accepted in the past as well as demographic and psychographic data that aid in identifying similar shoppers... once the system has determined a shopper likelihood of accepting a given offer it can calculate the expected profit from making that offer (see [0037]).